



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
US ARMY CONTRACTING SUPPORT AGENCY
5109 LEESBURG PIKE SUITE 916
FALLS CHURCH VA 22041-3201

22 MAR 1999



SARD-PS

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Military Dining Facility Solicitations and Contracts

The Department of Defense General Counsel (DODGC) has stated that the Randolph-Sheppard (R-S) Act is generally applicable to appropriated funded contracts for military dining facilities. The DODGC has also stated that the R-S Act may not be applicable to contracts for discrete services that do not involve the operation of dining facilities, as stated in the enclosed memorandum. Accordingly, this memorandum rescinds my previous policy guidance memoranda, dated August 1, 1997, and May 11, 1998.

We are continuing our efforts to draft new guidance that will clarify the relationship between the contracting preferences established by the Javits-Wagner-O'Day Act (JWOD) and the Small Business Act. Further, we are simultaneously pursuing a legislative initiative to exclude military dining facilities from R-S applicability. However, in the interim, contracting activities shall follow the policies and procedures set forth in this memorandum when dealing with R-S Act issues.

Continue to notify this office of any military dining facility requirement. Provide notice early in the procurement planning stage, before the synopsis of the proposed solicitation. State whether the requirement is generally satisfied by inclusion on the procurement list under JWOD, or whether the requirement has been satisfied in the past through set asides – small business or 8(a) programs. Address the following issues during the procurement planning stage:

a. Does the R-S Act apply? The R-S Act may not apply when the contract is for discrete services rather than the overall operation of a dining facility. If the services to be provided are a limited number of discrete services (mess attendant or KP services) and military personnel retain the overall operation of the cafeteria, then the cafeteria is operated "in-house" and R-S does not apply. This analysis should be applied to situations where a single "umbrella" food service contract covers multiple dining facilities. In applying this analysis, consider the following factors: 1) the total number of meals



served by contractors versus the total served by military personnel, 2) the total number of contractor personnel versus total number of military personnel, and 3) the total number of contractor-operated facilities versus military operated facilities.

b. If R-S does not apply, the solicitation will proceed according to the FAR and applicable supplements.

c. If R-S does apply, follow the procedures in AR 210-25, *Vending Facility Program for the Blind on Federal Property*, and inform the State Licensing Agency (SLA) of the requirement. To ensure maximum competition, ensure that the provision identifying the procurement as R-S applicable uses language that does not discourage small businesses from competing for the award.

d. Consider the SLAs as other than small businesses for the purpose of FAR Part 19, Subparts 702 and 708 and use the subcontracting plan as a source selection evaluation factor. In addition, if the prior contractor utilized a JWOD non-profit agency consider using a subcontracting plan that includes JWOD agencies as an evaluation factor.

e. Structure the source selection evaluation factors and subfactors such that only the proposals offering the best value will be included in the competitive range. Include only the most highly rated proposals in the competitive range. Apply the rules set forth in FAR 15.306(c) and use clause 52.215-1(f)(4) to limit the competitive range for purposes of efficiency. Establishing more than one competitive range is permissible provided it is consistent with the solicitation provision defining the competitive range(s).

f. For all existing contracts, not awarded pursuant to R-S, evaluate the services before exercising the options. If R-S Act would not apply, based on the DODGC guidance, then proceed in exercising the options. If the services being provided are subject to the R-S Act, then apply the procedures for implementing the Act and follow the guidance as above.

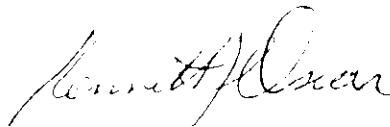
g. If the SLA is in the competitive range, all decisions to award to other than the SLA must be forwarded through this office for approval by the Secretary of Education prior to making the award.

h. Exercise options for pre-existing contracts in accordance with FAR 17.2

We suggest that contracting activities utilize performance-based SOW's with suitable quality assurance plans and performance standards.

Applying the R-S Act to military dining facility procurements may conflict with our obligations under the FAR implemented JWOD and small business programs. However, it must not result in contract awards that are unsatisfactory in terms of quality, timeliness, and cost.

My point of contact for additional information is Ms. Liz Smith, (703) 681-1048, DSN 761-1048, [mailto: smithek@hqda.army.mil](mailto:smithek@hqda.army.mil).



Kenneth J. Oscar
Deputy Assistant Secretary of the Army
(Procurement)

Enclosure

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